

Bill No. 32-05
Concerning: Contracts and
Procurement – Service Contracts
Revised: 7-31-06 Draft No. 3
Introduced: October 11, 2005
Enacted: August 1, 2006
Executive: _____
Effective: [[November 1, 2005]]
January 1, 2007
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Leventhal

AN ACT to:

- (1) establish a savings threshold that must be met before soliciting or awarding certain contracts for services if the contract will have an adverse effect on certain public employees;
- (2) require certain contracting actions to be subject to collective bargaining;
- (3) require certain County Departments and the Chief Administrative Officer to take certain actions; and
- (4) generally amend the law regarding contracts and procurement.

By adding

Montgomery County Code
Chapter 11B, Contracts and Procurement
Article XVI, Service Contracts
Sections 11B-71 through 11B-75

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Section 1. Sections 11B-71 through 11B-75 are added, as follows:

Article XVI. Service Contracts.

11B-71. Definitions.

In this Article, the following words have the meanings indicated.

(a) ***Adversely affect*** means:

(1) loss of County employment;

(2) reduction in pay or benefits;

(3) reduction in pay grade; or

(4) loss of bargaining unit work.

(b) ***Public employee*** means:

(1) a County merit system employee who is a member of the Office, Professional, and Technical (OPT) or Service, Labor, and Trades (SLT) bargaining unit; or

(2) a temporary, seasonal, or substitute employee who is a limited scope member of the OPT or SLT bargaining unit under Section 33-105(c)(2).

11B-72. Scope of Article.

(a) This Article applies to a service contract that the Director finds will, if awarded:

(1) exceed an estimated annualized cost of \$75, 000; and

(2) adversely affect a public employee, as defined in Section 11B-71(b), by reducing or eliminating work already performed by County employees when the contract is solicited.

The Director must adjust the amount in paragraph (1) every 2 years to reflect the aggregate increase, if any, in the Consumer Price Index for

all urban consumers for the Washington-Baltimore metropolitan area,
or any successor index, for the previous 2 years. The Director must
calculate the adjustment to the nearest multiple of \$100.

(b) This Article does not apply to:

(1) a contract that is primarily to obtain goods or construction, but
includes services related to the procurement of the goods or
construction;

(2) a contract that the Director finds is necessary to meet an
imminent threat to public health, welfare, or safety;

(3) a contract for services provided by a public entity;

(4) a contract for services provided by a local small business under
the Local Small Business Reserve Program; or

(5) a non-competitive contract awarded by the Chief Administrative
Officer under Section 11B-14(a)(4).

(c) This Article does not apply to or limit the authority of a Department
or Office Director to abolish a bargaining unit position or conduct a
reduction-in-force.

(d) This Article does not apply to or limit any contract for:

(1) any service that the County Council authorizes or requires to be
provided by an independent contractor;

(2) any service by a consultant; or

(3) any professional service, unless that service is provided by
bargaining unit employees when the contract is solicited.

11B-73. Approval of solicitation for service contract.

The Director must not issue a solicitation for a service contract under this
Article unless the Chief Administrative Officer has certified that the contract
complies with Section 11B-74.

11B-74. Certification by Chief Administrative Officer.

(a) The Chief Administrative Officer may certify that the Director may solicit a service contract under this Article if the using department has:

(1) taken steps to consider alternatives to the service contract, including reorganization, reevaluation of service, and reevaluation of performance;

(2) consulted with the certified representative of public employees who will be adversely affected if the County enters into the service contract; and

(3) demonstrated, based on a cost comparison analysis, that the County will save, over the term of the contract, at least 25 percent of the value of the contract.

(b) The using department must compare at least the following items in its cost analysis:

(1) direct costs, including fringe benefits, and an assumption that the contractor will meet the wage requirements of Section 11B-33A for the employees who perform work under the contract;

(2) indirect overhead costs, including a proportional share of administrative salaries and benefits, rent, equipment costs, utilities, and materials; and

(3) any continuing or transitional costs directly related to contracting for the service, including unemployment compensation and the cost of transitional services.

(c) (1) The using department must develop a plan of assistance for each public employee who will be adversely affected by the service contract. The plan of assistance must include:

(A) efforts to place each adversely affected public employee in a vacant County position;

(B) inclusion in the service contract, if feasible, of a requirement that the contractor [[will]] must:

(i) notify the County of any vacant position for which displaced County employees may apply; and

(ii) consider hiring displaced public employees; and

(C) written notice of the anticipated adverse effect to each adversely affected public employee and the certified bargaining representative 120 days before the anticipated adverse effect will occur.

(2) The using department must bargain with the certified representative before adopting a final plan of assistance.

11B-75. Enforcement.

(a) Noncompliance with this Article does not invalidate a contract award or proposed contract award that the County has otherwise validly awarded or issued.

(b) A public employee who is adversely affected by noncompliance with this Article may file an action in the Circuit Court for the County or the District Court of Maryland, depending on the amount in controversy. If the Court enters a judgment in favor of the employee, the County must reimburse the employee for any actual loss the employee incurred.

11B-76. Right of certified representative.

The certified representative of an adversely affected employee may submit [[a proposal]] an offer in response to a solicitation, under applicable procurement

regulations, to have bargaining unit employees perform the services while achieving the targeted savings.

Section 2. [[Effective Date]] Applicability. This Act applies to any solicitation issued and any covered service contract awarded on or after [[November 1, 2005]] January 1, 2007.

Section 3. Report and evaluation. The County Executive must report to the Council President, not later than January 1, 2009, on the Executive branch's experience, if any to that point, with the process required by Article XVI of Chapter 11B, inserted by Section 1 of this Act, including any savings realized or costs added and any other effect on Executive branch performance. The Office of Legislative Oversight must evaluate the effect of the process required by Article XVI of Chapter 11B on the performance of Executive branch departments and offices, including any savings realized or costs added, by July 1, 2009, or any later date approved by Council resolution.

Approved:

George L. Leventhal, President, County Council Date

Douglas M. Duncan, County Executive Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council Date